IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMPMOs No. 85 & 86 of 2007

Date of Decision: 14th May, 2007

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1. **CMPMO No. 85 of 2007**

   New India Assurance Company Vs. Anju Devi and others.

2. **CMPMO No. 86 of 2007**

   New India Assurance Company Vs. Lata Devi and others.

Coram

The Hon'ble Mr. Justice V.K.Gupta, C.J.

Whether approved for reporting?[1]

For the appellant: Mr. K.D.Sood, Advocate.

For the respondents: None.

V.K.Gupta,C. J. (Oral)

By this common order both the petitions are being disposed of together.

In the two applications filed under Section 170 of the Motor Vehicles Act, 1988 in the two cases, the petitioner-insurer prayed before the learned Motor Accidents Claims Tribunal, Shimla that it be granted permission to contest the claim petition on all grounds which are available to the insured in addition to the statutory defences also available to it in accordance with law. The necessary and relevant averment in support of the aforesaid prayer of the

[1] Whether the reporters of Local Papers may be allowed to see the judgment?

petitioner is contained in para 3 of the applications which I reproduce here-in-below, for ready reference:-

> **"That even otherwise also the insured has failed to intimate the factum of accident in writing to the replying respondent although the insurance policy enjoins upon the insured to intimate every happening whereby the liability might come upon the insurance company, in writing to the insurance company. Neither the claimant have supplied the insurance company with age, income nor has accidental proof nor the insured has supplied or furnished the Driving licence details of the driver who was driving the vehicle at the time of accident. As such there is a reasonable apprehension that the claimant might collude with the insured in order to claim higher compensation and the insured may not contest the proceedings diligently. On this ground also the permission to contest the proceedings on all grounds may be granted to the replying respondent."**

The learned Tribunal rejected the petitioners' aforesaid applications vide the impugned order dated 15th January, 2007 which reads thus:-

> **"Arguments heard on application under Section 170 of the M.V.Act. There is no material before me suggesting the collusion between the petitioners and the owner of the vehicle. Hence, this application is hereby dismissed.**
>
> **3 PWs examined. Remaining PWs be produced on 22.3.2007."**

Section 170 of the Motor Vehicles Act, 1988 reads thus:-

"Impleading insurer in certain cases.—Where in the course of any inquiry, the Claims Tribunal is satisfied that-

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made."

The specific requirement of law as a condition precedent for granting an insurer the right to contest the claim on all or any of the grounds that are available to an insured is that either there is collusion between the person making the claim and the persons against whom the claim is made or the persons against whom the claim is made have failed to contest the claim. Both the ingredients are absent and missing in these cases. The documents appended with these petitions clearly show that respondents No. 4 & 5 in CMPMO No. 85 of 2007 and respondents No. 2 & 3 in CMPMO No. 86 of 2007, the owner and driver, respectively of the offending vehicle, filed their replies to the claim petitions in which they have not only contested and refuted the allegations of rashness and negligence attributed to respondent No. 5 in CMPMO No. 85 of 2007 and respondent No. 3 in

CMPMO No. 86 of 2007 but have also offered defences which in normal circumstances the contesting respondents do offer. The averments made in para 3 of the application filed by the petitioner (supra) also do not suggest that there is either any collusion between the claim petitioners and respondents No. 4 & 5 in CMPMO No. 85 of 2007 and respondents No. 2 & 3 in CMPMO No. 86 of 2007. Merely because respondent No. 4 in CMPMO No. 85 of 2007 and respondent No. 2 in CMPMO No. 86 of 2007 did not inform the petitioner about the factum of accident or the claimants did not supply to the petitioner the age or income of the deceased would not amount to the existence of any collusion between the claim petitioners and respondents No. 4 & 5 in CMPMO No. 85 of 2007 and respondents No. 2 & 3 in CMPMO No. 86 of 2007.

The learned Tribunal was correct in dismissing the applications. No interference is called for. Both the petitions are dismissed in limine.

CMP No. 189/2007 in CMPMO No. 85 of 2007 & CMP No. 190/2007 in CMPMO No. 86 of 2007.

In view of the dismissal of the main petitions, both the applications are also dismissed.

May 14, 2007 (V.K.Gupta), C.J.
(KS)